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RELEASED IN FULL

INFO	LOG-00	AF-01	AMAD-01	ARA-01	CIAE-00	SMEC-00	OASY-00
	DODE-00	DOEE-00	ANHR-01	EAP-01	EUR-01	OIGO-01	H-01
	TEDE-00	INR-00	IO-16	JUSE-00	MCO-01	ADS-00	M-00
	NEA-01	NSAE-00	NSCE-00	OIC-02	OIG-04	OMB-01	PA-01
	PM-00	PRS-01	P-01	SB-00	SNP-00	SP-00	TRSE-00
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FM SECSTATE WASHDC
TO AMEMBASSY MOSCOW IMMEDIATE
AMEMBASSY PARIS PRIORITY
USMISSION USUN NEW YORK PRIORITY
INFO UN SECURITY COUNCIL COLLECTIVE IMMEDIATE
AMEMBASSY THE HAGUE
USMISSION GENEVA

C O N F I D E N T I A L STATE 251046

E.O. 12356: DECL: OADR
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TAGS: PREL, UNGA
SUBJECT: UN WAR CRIMES PROSECUTIONS FOR RWANDA

REF: 94 STATE 237220

1. THIS IS AN ACTION MESSAGE.

2. CONFIDENTIAL - ENTIRE TEXT.

3. AS DESCRIBED IN REFTTEL, THE USG HAS PROPOSED THAT THE JURISDICTION OF THE CURRENT WAR CRIMES TRIBUNAL FOR THE FORMER YUGOSLAVIA BE EXPANDED TO INCLUDE OFFENSES COMMITTED IN CONNECTION WITH THE RWANDA CONFLICT. OUR UNDERSTANDING IS THAT THE GOVERNMENTS OF RUSSIA AND FRANCE SUPPORT INTERNATIONAL PROSECUTION OF RWANDAN OFFENDERS,

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BUT THAT RUSSIA AND PERHAPS FRANCE FAVOR DOING SO BY CREATING A SEPARATE TRIBUNAL WITH ITS OWN STATUTE, RULES, JUDGES AND CHIEF PROSECUTOR. REFTEL PARA 5 CONTAINS TALKING POINTS DETAILING THE REASONS FOR OUR BELIEF THAT THE YUGOSLAV AND RWANDAN PROSECUTIONS SHOULD BE COMBINED WITHIN THE SAME TRIBUNAL.

4. THE COMMISSION OF EXPERTS APPOINTED BY THE UN

SECRETARY-GENERAL WILL RETURN FROM KIGALI ON SUNDAY AND IS EXPECTED TO FILE AN INTERIM REPORT IN SEPTEMBER CONFIRMING THAT SERIOUS VIOLATIONS HAVE OCCURRED AND RECOMMENDING THAT THE SECURITY COUNCIL AUTHORIZE INTERNATIONAL PROSECUTIONS. OUR UNDERSTANDING IS THAT THE INTERIM REPORT WILL NOT TAKE A POSITION ON HOW THESE PROSECUTIONS WOULD BE STRUCTURED. WE INTEND TO PUSH FOR A SECURITY

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COUNCIL DECISION AS SOON AS THE COMMISSION'S INTERIM REPORT IS FILED. RAPID ACTION IS ESSENTIAL TO HELP DISCOURAGE PRECIPITATE ACTIONS IN RWANDA AGAINST SUSPECTED OFFENDERS THAT COULD ADVERSELY AFFECT THE CHANCES FOR POLITICAL RECONCILIATION. THEREFORE IT IS IMPORTANT TO TRY TO RESOLVE THE CURRENT DIFFERENCES ABOUT THE STRUCTURE OF THE PROSECUTION EFFORT AS SOON AS POSSIBLE. ACCORDINGLY, WE REQUEST THAT EMBASSIES IN MOSCOW AND PARIS APPROACH THEIR HOST GOVERNMENTS AT AN APPROPRIATELY HIGH LEVEL, USING BOTH THE POINTS IN REFTEL AND THE ADDITIONAL POINTS IN PARAS 4 AND 5 BELOW.

5. ACTION FOR MOSCOW: IN ADDITION TO THE POINTS IN REFTEL, WE SUGGEST YOU MAKE THE FOLLOWING ADDITIONAL POINTS:

-- ONE OF THE ADVANTAGES OF EXPANDING THE CURRENT TRIBUNAL TO INCLUDE RWANDAN OFFENSES IS THAT IN DOING SO, ADDITIONAL JUDGES WOULD BE ADDED, GIVING THE TRIBUNAL A BROADER GEOGRAPHIC BASE. IN PARTICULAR, THE USG WOULD BE PREPARED TO SUPPORT A QUALIFIED RUSSIAN CANDIDATE, WHO WOULD, IF ELECTED, THEREBY BE ABLE TO PARTICIPATE IN THE HANDLING OF BOTH YUGOSLAV AND RWANDAN CASES. ON THE OTHER HAND, IF A SEPARATE TRIBUNAL IS CREATED FOR RWANDA, THERE WOULD BE NO OPPORTUNITY TO BRING A RUSSIAN JUDGE INTO THE HANDLING OF THE YUGOSLAV CASES.

-- IN ADDITION, WE HAVE RECEIVED FAVORABLE PRELIMINARY REACTIONS FROM KEY AFRICAN GOVERNMENTS FOR EXPANDING THE CURRENT TRIBUNAL TO INCLUDE RWANDA. THIS IS PROBABLY DUE,

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AT LEAST IN PART, TO THE FACT THAT THE CURRENT HEAD OF ONE
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OF THE TWO TRIAL CHAMBERS (JUDGE KARIBI-WHYTE) IS FROM
NIGERIA, AND THE CURRENT CHIEF PROSECUTOR (JUDGE
GOLDSTONE) IS FROM SOUTH AFRICA AND HAS THE PERSONAL
SUPPORT OF PRESIDENT MANDELA.

-- THE POINT HAS BEEN MADE TO US THAT IT WOULD BE
DESIRABLE TO HAVE AT LEAST SOME ASPECT OF THE RWANDA
PROSECUTION PROCESS TAKE PLACE IN AFRICA, SO AS TO PROVIDE
A VISIBLE CONFIRMATION TO RWANDANS THAT THE INTERNATIONAL
COMMUNITY IS TAKING THIS EFFORT SERIOUSLY. WE AGREE

ENTIRELY. OUR PROPOSAL WOULD ALLOW THE TRIBUNAL TO SIT
OUTSIDE THE HAGUE WHENEVER IT FINDS THAT APPROPRIATE, AND
WE THINK IT WOULD BE DESIRABLE FOR THE TRIBUNAL TO HOLD
HEARINGS AND POSSIBLY SOME TRIALS IN AN AFRICAN LOCATION
SUCH AS NAIROBI. (WE ARE CURRENTLY INQUIRING AS TO WHERE
APPROPRIATE FACILITIES MIGHT BE FOUND.)

-, IT MAY BE THAT THE RUSSIAN GOVERNMENT'S PROPOSAL FOR A
SEPARATE TRIBUNAL FOR RWANDA REFLECTS A RELUCTANCE TO TAKE
ANY STEP THAT MIGHT APPEAR TO MOVE TOWARD THE CREATION OF
A PERMANENT INTERNATIONAL CRIMINAL TRIBUNAL. WE ASSURE
YOU THAT THIS IS NOT THE PURPOSE OR EFFECT OF OUR
PROPOSAL. IT IS SIMPLY THE MOST EFFECTIVE WAY OF HANDLING
TWO AD HOC PROSECUTION EFFORTS; SEPARATE TRIBUNALS WOULD
RISK THE CREATION OF DISPARATE LEGAL INTERPRETATIONS AND
RESULTS IN THE TWO SITUATIONS, WHICH COULD UNDERMINE THE
LEGITIMACY OF THE RULINGS OF THE TWO BODIES. THE PROCESS
REMAINS IN THE CONTROL OF THE SECURITY COUNCIL AND IS
LIMITED TO THE AREA OF WAR CRIMES, WHERE AD HOC
INTERNATIONAL PROSECUTIONS HAVE LONG BEEN ACCEPTED. IF
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YOU LIKE, THIS COULD BE MADE CLEAR IN THE COUNCIL'S
RESOLUTION.

-- WE HOPE THAT THIS MATTER CAN BE RESOLVED AS SOON AS
POSSIBLE, SO THAT THE SECURITY COUNCIL CAN ACT PROMPTLY
WHEN THE CURRENT COMMISSION OF EXPERTS SUBMITS ITS INTERIM
REPORT, WHICH WE EXPECT WILL OCCUR IN SEPTEMBER. WE
ENCOURAGE YOU TO CONSIDER WAYS IN WHICH THIS MIGHT BE
RESOLVED TO OUR MUTUAL SATISFACTION.

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FYI: WE UNDERSTAND THAT THE DESIRE FOR A SEPARATE TRIBUNAL MAY BE COMING IN LARGE PART FROM THE FOREIGN MINISTRY LEGAL OFFICE. YOU MAY THEREFORE WANT TO INCLUDE THE RUSSIAN LEGAL ADVISER IN CARRYING OUT THIS DEMARCHE, AND IF DESIRED, STATE LEGAL ADVISER HARPER CAN TALK TO HIM AS WELL. END FYI.

6. ACTION FOR PARIS: IN ADDITION TO THE POINTS IN REFTEL, WE SUGGEST YOU MAKE THE FOLLOWING ADDITIONAL POINTS:

-- ONE OF THE ADVANTAGES OF EXPANDING THE CURRENT TRIBUNAL TO INCLUDE RWANDAN OFFENSES IS THAT IN DOING SO, ADDITIONAL JUDGES AND PROSECUTORS WOULD BE ADDED, GIVING THE TRIBUNAL A BROADER GEOGRAPHIC BASE. IN PARTICULAR, THE USG WOULD WELCOME THE APPOINTMENT OF A DEPUTY PROSECUTOR AND STAFF PROSECUTORS FROM OTHER FRENCH-SPEAKING COUNTRIES TO HANDLE THE RWANDAN CASES, AS WELL AS THE ELECTION OF AN ADDITIONAL FRENCH-SPEAKING JUDGE TO DEAL WITH BOTH RWANDAN AND YUGOSLAV CASES.

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-, IN ADDITION, WE HAVE RECEIVED FAVORABLE PRELIMINARY REACTIONS FROM KEY AFRICAN GOVERNMENTS FOR EXPANDING THE CURRENT TRIBUNAL TO INCLUDE RWANDA. THIS IS PROBABLY DUE, AT LEAST IN PART, TO THE FACT THAT THE CURRENT HEAD OF ONE OF THE TWO TRIAL CHAMBERS (JUDGE KARIBI-WHYTE) IS FROM NIGERIA, AND THE CURRENT CHIEF PROSECUTOR (JUSTICE GOLDSTONE) IS FROM SOUTH AFRICA AND HAS THE PERSONAL SUPPORT OF PRESIDENT MANDELA.

-- THE POINT HAS BEEN MADE TO US THAT IT WOULD BE DESIRABLE TO HAVE AT LEAST SOME ASPECT OF THE RWANDA PROSECUTION PROCESS TAKE PLACE IN AFRICA, SO AS TO PROVIDE A VISIBLE CONFIRMATION TO RWANDANS THAT THE INTERNATIONAL COMMUNITY IS TAKING THIS EFFORT SERIOUSLY. WE AGREE ENTIRELY. OUR PROPOSAL WOULD ALLOW THE TRIBUNAL TO SIT OUTSIDE THE HAGUE WHENEVER IT FINDS THAT APPROPRIATE. AND WE THINK IT WOULD BE DESIRABLE FOR THE TRIBUNAL TO HOLD HEARINGS AND POSSIBLY TRIALS IN AN AFRICAN LOCATION SUCH AS NAIROBI.

-- IT MAY BE THAT THE RUSSIAN GOVERNMENT'S PROPOSAL FOR A SEPARATE TRIBUNAL FOR RWANDA REFLECTS A RELUCTANCE TO TAKE ANY STEP THAT MIGHT APPEAR TO MOVE TOWARD THE CREATION OF A PERMANENT INTERNATIONAL CRIMINAL TRIBUNAL. WE HAVE ASSURED THE RUSSIAN GOVERNMENT THAT THIS IS NOT THE

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PURPOSE OR EFFECT OF OUR PROPOSAL. IT IS SIMPLY THE MOST EFFECTIVE WAY OF HANDLING TWO AD HOC PROSECUTION EFFORTS; SEPARATE TRIBUNALS WOULD RISK THE CREATION OF DISPARATE LEGAL INTERPRETATIONS AND RESULTS IN THE TWO SITUATIONS, WHICH COULD UNDERMINE THE LEGITIMACY OF THE RULINGS OF THE TWO BODIES. THE PROCESS REMAINS IN THE CONTROL OF THE

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SECURITY COUNCIL AND IS LIMITED TO THE AREA OF WAR CRIMES, WHERE AD HOC INTERNATIONAL PROSECUTIONS HAVE LONG BEEN ACCEPTED.

-- WE HOPE THAT THIS MATTER CAN BE RESOLVED IN THE NEXT TWO WEEKS, SO THAT THE SECURITY COUNCIL CAN ACT PROMPTLY WHEN THE CURRENT COMMISSION OF EXPERTS SUBMITS ITS INTERIM REPORT, WHICH WE EXPECT WILL OCCUR IN SEPTEMBER. WE ENCOURAGE YOU TO CONSIDER WAYS IN WHICH THIS MIGHT BE RESOLVED TO OUR MUTUAL SATISFACTION.

FYI: WE UNDERSTAND THAT THIS MATTER IS BEING CONSIDERED BY THE OUTGOING FOREIGN MINISTRY LEGAL ADVISER PUISSOCHET. YOU MAY THEREFORE WANT TO CONTACT PUISSOCHET IN MAKING THIS DEMARCHE, AND IF DESIRED, STATE LEGAL ADVISER HARPER CAN TALK TO HIM AS WELL. END FYI.

7. ACTION FOR USUN: IF YOU FIND IT APPROPRIATE, YOU MIGHT USE THE ABOVE POINTS WITH THE FRENCH AND RUSSIAN REPRESENTATIVES IN NEW YORK AS WELL. WE WOULD ALSO APPRECIATE AN UPDATE ON WHERE THE OTHER COUNCIL MEMBERS STAND ON THIS MATTER. CHRISTOPHER

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